

ST 00-0191-GIL 08/29/2000 CLAIM FOR CREDIT

Only persons who have actually paid taxes to the Department can file claims for credit. See 86 Ill. Adm. Code 130.1501. (This is a GIL).

August 29, 2000

Dear Xxxxx:

This letter is in response to your letter dated May 16, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department, 2 Ill. Adm. Code 1200.120(b) and (c) (see <http://www.revenue.state.il.us/legalinformation/regs/part1200>).

In your letter, you have stated and made inquiry as follows:

On Nov. 20, 1999, we purchased a Motorhome, ##### from COMPANY. We paid \$ 90,000.00 difference from the trade-in of our Foretravel, #####. We also paid sales tax of \$ 6302.80.

The Motorhome did not perform as represented to us. Neither was it built as well as we expected. After repeated problems, I returned to COMPANY and because I was so unhappy with the Motorhome, they allowed me to trade the Motorhome back to them for my used Foretravel (which they had not sold yet.) They refunded the \$90,000.00 on May 4, 2000 and I took possession of the Foretravel, returning the Motorhome to COMPANY.

They did not refund any of the \$6302.80 Sales Tax.

Please inform me as to how I can secure a refund on this sales tax. I am enclosing copies of the ST-556 on both transactions.

Thank you very much.

Please refer to 86 Ill. Adm. Code 130.1501, enclosed, which describes the procedures used to obtain claims for credit or refunds for taxes that were erroneously paid. Only persons who have actually paid taxes to the Department can file claims for credit or refund. In retail sales of vehicles, these persons would be the dealers who remitted the taxes to the State. Claimants must establish such taxes were paid through mistakes of fact or errors of law. The Department is only authorized to approve credits for claimants who clearly establish they have borne the burden of taxes erroneously paid or that they have unconditionally repaid the taxes to the vendees from whom they collected such taxes.

If vehicle dealers pay tax erroneously to the Department, then only such vehicle dealers may file and receive claims for credit. Retailers, including vehicle dealers, are not required under Illinois law to file claims for credit. Whether vehicle dealers do file such claims is a business decision on their part.

Please note that the Retailers' Occupation Tax allows for claims for credit by vehicle retailers in the case of returned merchandise, where vehicles are returned to dealers that sold the vehicles and collected and remitted the tax on the original sale. The dealer could treat the return of the vehicle as a returned merchandise situation by filing a ST-556-X. To receive credit for a returned merchandise situation, the dealer would check Line 3 in Part 2 of the ST-556-X which states "My customer returned the vehicle and cancelled the deal," as well as completing other applicable Parts on the form. The dealer would receive credit from the Department if he had unconditionally refunded the tax to the customer prior to filing the ST-556-X.

However, where a dealer purchases a vehicle back from the customer instead of accepting a vehicle as returned merchandise, the sales taxes initially paid are not considered to be erroneously paid. A dealer would file a ST-556 to indicate the transaction is a purchase.

The Department is limited by statute as to what circumstances it is authorized to issue a credit or refund for Retailers' Occupation Tax or Use Tax (sales tax). Only when a dealer files an amended transaction reporting return (ST-556-X) can the Department consider the taxes to have been paid in error so that a claim can be approved.

In the case of your returned Motorhome, the dealer treated it as a purchase instead of as returned merchandise. In order to treat the transaction as returned merchandise, the dealer would need to file a ST-556-X to cancel both ST-556s, copies of which were appended to your letter. Again, whether any retailer returns sales tax to a customer and files a claim for credit is a business matter between that retailer and his customer. The Illinois Department of Revenue cannot compel a retailer to file a claim for credit.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Karl W. Betz
Associate Counsel

KWB:msk
Enc.